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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,277	03/26/2004	Gregg A. Myles	710p251	6057

33621 7590 06/03/2005

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EXAMINER
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LAYNO, BENJAMIN

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/809,277	<b>Applicant(s)</b> MYLES, GREGG A.	
	<b>Examiner</b> Benjamin H. Layno	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.  
    4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
        1. ☐ Certified copies of the priority documents have been received.  
        2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantelon in view of McBride.

The patent to Cantelon discloses a game board apparatus comprising a game board horizontally divided into a bottom sector representing "Destruction City" (hell) Fig. 1B, and a top sector representing "Celestial City" (heaven) Fig. 1A. The first sector is divided into a plurality of playing spaces numbered 1' to 38', and the second sector is divided into a plurality of spaces numbered 39' to 91', see col. 5, lines 12-25. A starting position numbered 1' is disposed at one end of the playing spaces of the first sector, and a finish position numbered 92' is disposed at the end of the playing spaces of the second sector. Cantelon further comprises question cards 56, and a deck of answer cards 58, col. 8, lines 24-33 and col. 9, lines 32-42. The question cards each have questions 62 and possible answers 66. The answer cards each have answers 68, 69. Cantelon further comprises a timer means Fig. 2 for timing the predetermined playing interval of an individual player.

The patent to McBride teaches that it is known in the question and answer game board art to provide question and answer cards 30 have indicia 32 specifying alternative

moves. If the player answers the question and answer card correctly, that player moves the number of advance points indicated on the card. If the player answers incorrectly that player loses a turn, col. 3, lines 29-56. In view of such teaching, it would have been obvious to modify how Cantelon's playing pieces 20 move along the playing spaces. Instead of using spinner 28 to determine the movement of Cantelon's playing pieces, how a player answers the question cards would have determined the movement of Cantelon's playing pieces. Cantelon's question cards 56 would have been provided with indicia specifying alternative moves, (e.g. "Advance 2 Spaces" for a correct answer, "Lose A Turn" for an incorrect answer). This modification would have made the forward movement of Cantelon's playing pieces towards the finish more challenging, and therefore more exciting to play.

The only difference between "answers of yes or no", questions pertaining to "moral transgressions", question pertaining to "moral virtues" printed on the question answer cards of the present invention, and the biblical quotations 62 printed on Cantelon's question and answer cards resides in the meaning and information conveyed by printed matter. Such differences are considered unpatentable, *Ex parte Breslow*, 192 USPQ 431.

Furthermore or in the alternative, Cantelon discloses the claimed invention except for the "answers of yes or no", questions pertaining to "moral transgressions", question pertaining to "moral virtues" printed on the question answer cards set forth in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the questions and answers on Cantelon's cards since

it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate, it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of question and answer does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel or unobvious functional relationship between the printed matter e.g. ("answers of yes or no", questions pertaining to "moral transgressions", question pertaining to "moral virtues" printed on the question answer cards) and the substrate e.g. (surface of the question and answer cards) which is required for patentability.

3. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantelon in view of McBride as applied to claim 1 above, and further in view of MacRae. The patent to MacRae discloses a game board comprising a deck of drunk (mercy) cards, Figs. 6 and 7. When a player's playing piece moves to space 97, that player must draw by chance a drunk card. Some of the drunk cards have indicia indicating disqualification or elimination of a player from the game, and other drunk cards have indicia permitting continued play. In view of such teaching, it would have been obvious to incorporate a deck of mercy cards to Cantelon's game. When a player's playing piece moves to a predetermined space on Cantelon's game board, that player would have been required to draw a mercy card indicating whether the player is disqualified

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from the game or continues play. This modification would have made Cantelon's game more challenging and therefore more exciting to play.

In regard to claim 4, in view of MacRae's teaching above, it would have been obvious to a person having ordinary skill in the art to further incorporate a mercy card, to Cantelon's game, having indicia allowing the player to move immediately to the finish space 92'. This modification would have made Cantelon's game more exciting and therefore more attractive to the players.

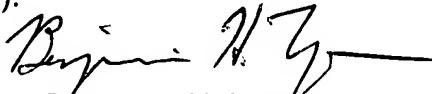
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Miller discloses a question and answer type board game having a bible theme. The board game comprises a game board having a path with a starting space at the bottom and a finish space at the top. Players must answer question cards correctly in order to advance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3711

bhl